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## NOTES.

### CONSTRUCTION OF THE SAFETY APPLIANCE ACT.

In the case of *United States* v. *Illinois Central R. Co.*,[1] decided on March 27, 1909, the liability of interstate railroads under the Safety Appliance Act[2] was fully discussed. The action was brought by the United States against the railroad company to collect penalties for infractions of the Act. Among the sections violated was the second, which declares it to be "unlawful for any such common carrier to haul * * * on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars." It was argued for the United States

[1] 170 Fed. 542.

[2] Mch. 2, 1893, C. 196, § 6, 27 Stat. 532.

that the Act was absolute in its terms, and could be satisfied only by having all cars so equipped and in working order at all events. The Court, however, construed this clause as imposing only a duty to equip the cars with the specified appliances, after which the law would be satisfied by a compliance with the Common Law requirement that the utmost diligence be exercised to keep the appliances in repair.

The plaintiffs position, favoring an absolute reading of the Act, has some support,[3] the decisions going on the ground that the wording of the statute is plain and the question of hardship or injustice is not for the courts, but for the legislature.[4] This interpretation is based on reading the words, "and which can be uncoupled without the necessity of men going between the ends of the cars," as imposing an independent requirement. It would seem, however, that the interpretation of this clause in the principal case, as descriptive of the appliance in question, and not as adding anything to the requirements of the section is more reasonable. This is the majority view and is amply supported by recognized rules of statutory construction.

The able opinion in *Ry. Co.* v. *Delk*[5] first approaches the subject by inquiring into the purpose of the statute. We find from the title that the general purpose is to promote the safety of employés and travellers, and that the immediate purpose is to compel common carriers to equip their cars with automatic couplers. The title could not, of course, override the plain language of the Act itself, but it is legitimate to examine it in connection therewith,[6] and in this case we find that section two corresponds with what the title has indicated—it requires that cars be equipped with automatic couplers. In order to discover just how much of the previous law this requirement is meant to supersede, the Court in the Delk case then examines the state of the law before the Act. At that time a number of types of couplers were in use, chiefly the link and pin variety, and the Common Law rule of utmost diligence in the inspection and care of them obtained. The purpose of the Act is fully accomplished by changing the type of coupler without altering the law in any other respect.

This reading is still further supported by the rule that a

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[3] *Ry.* v. *Taylor,* 210 U. S. 281; *U. S.* v. *Ry.,* 135 Fed. 122; *U. S.* v. *Ry.,* 150 Fed. 229.

[4] Endlich, Interpretation of Statutes, § 4.

[5] 158 Fed. 931.

[6] *Chas. R. Bridge* v. *Warren Bridge,* 11 Pet. 420, at p. 611; Endlich, Interpretation of Statutes, § 58.

statute in derogation of the previous law, particularly when it was Common Law, is strictly construed.[7] Much stress has been laid also on the rule that when a statute admits of two constructions, and one imposes a duty impossible to perform, the other should be preferred. If the Safety Appliance Act were construed absolutely it would result in a carrier's being liable for a break or defect that occurred in a car moving between stations, no matter how quickly it was discovered and remedied;[8] and it has been pointed out that such a rule would lead to the absurd result that the very act of repairing a defective coupler would make a case and work a forfeiture.[9]

In support of the majority rule it has also been said that an unjust construction should be avoided where possible.[10] The object of the statute is fully accomplished without subjecting the railroad to the burden of an insurer.[11]

It is to be regretted that the only Supreme Court utterance on this subject (which, however, is under a different section and therefore not binding on the Court in the principal case), is in accord with the absolute construction of the Act. On principle the doctrine of the principal case would seem to be preferable.

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## Re-entry and Forfeiture of Estates on Condition.

In a recent Arkansas case[1] the Court, in an elaborate opinion, held that the grantor of an estate on condition might after breach of the condition convey the land without re-entry and that the grantee might enforce the forfeiture for breach of the condition. This decision is based on two grounds (1) that the doctrine of livery of seisin does not exist in Arkansas and (2) that there is no law against maintenance in that state.

(1) The doctrine that an entry, or its equivalent, by the grantor, or his heir, is necessary before the forfeiture of an estate for breach of condition can be effected, had its origin in the theory that, as livery of seisin was necessary for the creation of a freehold estate, a ceremony of equal solemnity

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[7] *R. R.* v. *Brinkmeier,* 93 Pac. 621; Endlich, Interpretation of Statutes, § 127.

[8] *U. S.* v. *Ry.,* 156 Fed. 182.

[9] *U. S.* v. *Ry.,* 150 Fed. 442.

[10] Endlich, Interpretation of Statutes, § 258; Bishop on Statutory Crimes, § 82.

[11] *U. S.* v. *Ry.,* 156 Fed. 182.

[1] *Moore* v. *Sharpe,* 121 S. W. 341.